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PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reissue

Confirmation No. 7468

Application No. : 09/902,475

Applicant : Briere, *et al.*

Filed : July 9, 2001

Title : **BLOW MOLDING DEVICE FOR PRODUCING  
THERMOPLASTIC CONTAINERS**

Art Unit : 1722

Examiner : Robert B. Davis

Docket No. : 011496/236625

Customer No. : 00826

Mail Stop Petition

Commissioner for Patents

Post Office Box 1450

Alexandria, Virginia 22313-1450

**PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM OF PRIORITY  
UNDER 35 U.S.C. § 119 TO A FOREIGN APPLICATION**  
(37 C.F.R. § 1.55; MPEP 201.14)

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The Applicant hereby petitions the Commission to accept a delayed claim of priority to a foreign application on the grounds that the entire delay was unintentional. The facts demonstrate that the Applicant intended to claim foreign priority in this continuation application, just as foreign priority was claimed in the parent application. As set forth in 37 C.F.R. § 1.55, a claim for priority under 35 U.S.C. §§ 119 or 365 submitted after the time period provided may be accepted if its filing was unintentionally delayed.

**Brief Statement of Facts**

1. On April 19, 1995, the Applicant filed an application for patent in France; Application No. 95 04651 ("the French application").

2. On April 16, 1996, the Applicant filed an international (PCT) application; Application No. PCT/FR96/00576 ("the PCT application"). The PCT application claimed priority to the French application.

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3. On October 17, 1997, the Applicant filed a U.S. application under 35 U.S.C. § 371; Application No. 08/945,089 (“the U.S. application”). The U.S. application claimed priority to the PCT application. The U.S. Application matured into U.S. Patent 5,968,560, which issued on October 19, 1999. The claims of priority to the PCT application and the French application were perfected during prosecution of the U.S. application, and appear on the face of U.S. Patent 5,968,560. A certified copy of the priority documents was filed in the U.S. application.

4. On April 20, 2000, the Applicant filed a U.S. application for reissue of U.S. Patent No. 5,968,560 (“the Reissue application”). The Applicant made a timely claim of foreign priority in the Reissue application. The Office acknowledged the claim of foreign priority, and the presence of certified copies of the priority documents in the record, in the Office Action Summary, Paper No. 7, mailed February 28, 2001. A copy of the Office Action Summary is attached hereto as Exhibit A.

5. On July 9, 2001, the Applicant filed the present U.S. application, which is a continuation of the Reissue application.

(a) On July 9, 2001, along with the present application, the Applicant included a copy of U.S. Patent No. 5,968,560 which, on its face, includes the claims of priority that were perfected in the original U.S. application. A copy of page one of U.S. Patent No. 5,968,560 is attached hereto as Exhibit B.

(b) On July 9, 2001, the Applicant filed a Preliminary Amendment in the present application, which included the following “Cross-Reference to Related Applications:”

“This application is a continuation of U.S. Application No. 09/553,413, filed April 4, 2000 which was a Reissue Application filed for U.S. Patent No. 5,968,560, Application No. 08/945,089 filed October 17, 1997, which was the National Phase Entry of PCT application PCT/FR/00576, filed April 16, 1996. The 09/553,413 and 08/945,089 applications are hereby incorporated herein in their entirety by reference.”

claimed with respect to precisely the same subject matter, would seem to allow formal requirements to interfere undesirably with substantive rights.” *Id.* at 672. Like the continuation application in *Van Esdonk*, the present application is a continuation of a parent application where the foreign priority claim was timely made. The Applicant here, however, has asserted its foreign priority claim while the present application is still pending.

In light of the decision in *Van Esdonk* to accept a foreign priority claim by Certificate of Correction and the chronological facts which show the Applicant’s intent to assert a claim foreign priority, the Applicant’s unintentionally-delayed foreign priority claim – submitted while the present application is still pending – should be accepted.

### **Conclusion**

In view of the foregoing remarks and the facts in the record, the Applicant respectfully asks the Commissioner to grant this Petition and accept the claim of foreign priority asserted formally in the Supplemental Declaration (Exhibit C). In support of this Petition, and in accordance with 37 C.F.R. § 1.55(c), the Applicant submits herewith:

- (1) a copy of the claim for foreign priority, previously submitted in the Supplemental Declaration (Exhibit C);
- (2) the surcharge set forth in 37 C.F.R § 1.17(t) (any additional fee may be charged to our Deposit Account No. 16-0605); and,
- (3) the Applicant’s statement, above, that the entire delay was unintentional.

Respectfully submitted,



J. Scott Anderson  
Registration No. 48,563

Re-Issue Application No. 09/902,475

Petition to Accept an Unintentionally Delayed Claim of Foreign Priority

Page 5 of 5

**Customer No. 00826**

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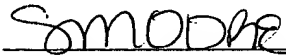
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**CERTIFICATE OF MAILING BY EXPRESS MAIL**

Express Mail Label Number EV 700808556 US

Date of Deposit: November 28, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service using the Express Mail "Post Office to Addressee" service, as permitted under 37 C.F.R. § 1.10, on the date indicated above, and is addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.



Shana Moore

(c) On March 7, 2005, the Applicant submitted a "Supplemental Declaration for Reissue Patent Application," signed by each inventor, and asserting a claim of priority to the PCT application and the French application. A copy of the Supplemental Declaration is attached hereto as Exhibit C.

#### **Statement in Support of Unintentional Delay**

The Applicant hereby states that the entire delay – between the date the claim was due under C.F.R. § 1.55(a)(1) and the date the claim was asserted in the Supplemental Declaration (Exhibit C) – was unintentional.

#### **Discussion**

Foreign priority was claimed in the parent application. Because the facts show that the Applicant intended to also claim foreign priority in this continuation application, the record supports the Applicant's statement that the entire delay was unintentional.

The parent Reissue application included a timely claim of foreign priority, as acknowledged in an Office Action Summary (Exhibit A). The present application, as a continuation of the Reissue application, included a copy of the U.S. Patent 5,968,560 which includes the foreign priority claims made in the original application (Exhibit B). The present application, in a Preliminary Amendment, included a Cross-Reference to Related Applications referring to and incorporating the original application and the parent Reissue application. These facts demonstrate that the Applicant intended to assert a foreign priority claim in the present application when it was filed and, therefore, support the Applicant's statement that the entire delay in asserting a formal claim of foreign priority was unintentional.

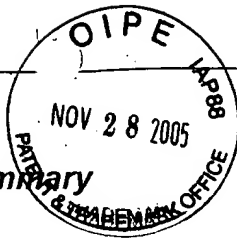
In a decision by the Commissioner, an applicant was permitted to add a claim of foreign priority by filing a Certificate of Correction after a continuation application issued because the claim was timely made in the parent application. *In re Van Esdonk*, 187 U.S.P.Q. 671, 672 (Comm'r Pats. 1975); *see also*, MPEP 201.16. The Commissioner allowed the Certificate of Correction because, "to deny patentees the benefit of their foreign priority, once properly



## **Exhibit A**

### **Office Action Summary**

(Paper No. 7; mailed February 28, 2001, in the parent application for Reissue; Application No. 09/553,413)



## Office Action Summary

Application No.

09/553,413

Applicant(s)

BRIERE ET AL.

Examiner

Robert B. Davis

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 22-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/945,089.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_

Alston & Bird

MAR 6 2001

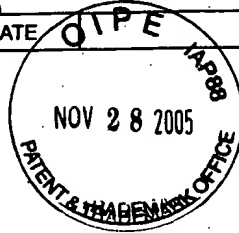
Received By 



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/553,413 04/20/00 BRIERE

000826 IM51/0228  
ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TYRON STREET, SUITE 4000  
CHARLOTTE NC 28280-4000

EXAMINER
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ART UNIT	PAPER NUMBER
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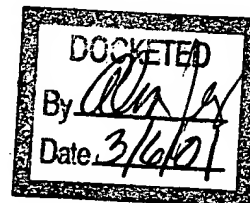
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11496-195086  
DATE MAILED: 2-28-01

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1722

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks





## **Exhibit B**

Page One of U.S. Patent 5,968,560  
(issued October 19, 1999)

## **Exhibit C**

**Supplemental Declaration for Reissue Patent Application  
(submitted March 7, 2005, in the present application)**



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Commissioner for Patents  
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Alexandria, Virginia 22313-1450

**SUBMISSION OF SUPPLEMENTAL DECLARATION  
FOR REISSUE PATENT APPLICATION**

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The Applicants hereby submit a Supplemental Declaration signed by each inventor for filing in the above-referenced reissue patent application.

The undersigned is available at (404) 881-7821 if the Examiner has any questions or requests that may be resolved by telephone in order to expedite the examination.

The Applicants do not believe any request for extension of time or fees are required, beyond those which may otherwise be provided for in documents accompanying this paper. In the event, however, that additional extensions of time are necessary to allow the consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a) and any fee required

Re-Issue Application No. 09/902,475  
Submission of Supplemental Reissue Declaration  
Page 2 of 2

therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit  
Account No. 16-0605.

Respectfully submitted,



J. Scott Anderson

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to **Mail Stop Reissue**, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on this, the 7<sup>th</sup> day of March, 2005.



Shana Moore

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